

REMARKS

Double Patenting Rejection

In section 1 of the Office Action, the Examiner rejects claims 1-8 under 35 USC 101 as claiming the same invention as that of claims 1-8 of copending application no. 10/057,187. This rejection is respectfully traversed.

Under MPEP 804A (Statutory Double Patenting - 35 USC 101), "[i]n determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? ... 'Same invention' means identical subject matter. ... A reliable test for double patenting under 35 USC 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent."

Claims 1-8 of the present application clearly do not claim identical subject matter with claims 1-8 of copending application no. 10/057,187. For example, claim 1 of the present application recites, in part, "said at least one arm member has substantially a rectangular cross section with four curved corners having a predetermined radius of curvature, in a perpendicular direction to a longitudinal direction of said at least one arm member". These limitations are not recited in claims 1-8 of copending application no. 10/057,187. Moreover, claim 1 of application no. 10/057,187 recites, in part, "an outer circumferential frame having opposite end surfaces and an inner peripheral surface, said inner peripheral

surface being connected to said opposite end surfaces to form opposite connecting edge portions” and “said one end of said at least one arm member is connected to a portion of said inner peripheral surface of said outer circumferential frame, said portion excluding said opposite connecting edge portions”. These limitations are not recited in claims 1-8 of the present application.

In section 1 of the Office Action, the Examiner states that “[t]he difference between the two applications is the cross section with four curved corners” and that “[i]t would have been obvious ... to modify the application of 10/057187 to include the cross section as disclosed in 10/057186 in order to provide an efficient means of attaching speaker components.”

Since the Examiner admits that there are differences (cross section with four curved corners) between claims 1-8 of the present application and claims 1-8 of copending application no. 10/057,187, the rejection under 35 USC 101 is clearly improper. Even if such difference is obvious (which the Applicant disagrees), the Examiner can only issue an obviousness-type double patenting rejection, which can be overcome by filing a terminal disclaimer.

Due to the reasons stated above, the Applicant believes that the rejection under 35 USC 101 is improper and should be withdrawn.

Rejections under 35 USC 102(b)

In section 3, the Examiner rejects claims 1-8 under 35 USC 102(b) as

being anticipated by Ohyaba et al. (US Patent No. 6,144,753). These rejections are respectfully traversed.

As mentioned in the last response, Ohyaba et al. fails to disclose, suggest, or teach, *inter alia*, the following features recited by claim 1 of the present application:

“said at least one arm member has substantially a rectangular cross section with four curved corners having a predetermined radius of curvature, in a perpendicular direction to a longitudinal direction of said at least one arm member.”

As mentioned in the last response, Ohyaba et al. nowhere shows or mentions the shape of the **cross section** of the connecting portion 42. The figure on which the Examiner relies (Fig. 3) illustrates a plain view of the damper 13 and the connecting portion 42, not the cross section of the connecting portion.

It appears that the Examiner confuses the cross sectional view of the arm member as illustrated in Fig. 3 of the present application with the plain view of the connecting portion 42 as illustrated in Figs. 2-3 of Ohyaba et al. In Ohyaba et al., the damper 13 has a racetrack-shaped connecting portion 41 **in plain view**, but the cross-sectional shape of the connecting portion is not described.

In Ohyaba et al., only Figs. 1, 4b and 6 are cross sectional views. According to these figures, the connecting portion or arm member 42 seems to have a rectangular cross-section with sharp edges in the perpendicular

direction to the longitudinal direction of the arm member.

According to the specific cross-sectional shape of the arm member as recited in claim 1 of the present application, it is possible to prevent concentration of stress and occurrence of fissures or cracks, as described in the specification (for example, page 9, lines 10-14). Ohyaba et al. gives no consideration to the problem of concentration of stress and occurrence of fissures or cracks in the arm member or connecting portion. There is no suggestion or motivation in Ohyaba et al. that the arm member should have this **unusual cross-sectional shape**.

Due to the reasons stated above, the Applicant believes that claim 1 is patentable over the cited reference. Claims 2-16 are also patentable, at least by virtue of their dependency from claim 1.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account No. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

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Examiner Kimberly R. Lockett

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Response

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the attorney of record in the applications is a registered practitioner who is a member of Ladas & Parry.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 4, 2003

(Date of Deposit)


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(Name of Person Signing)


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9/4/03
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Respectfully submitted,


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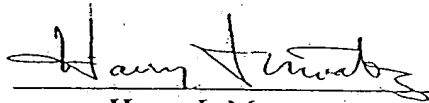
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Expires: November 19, 2003



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Director of Enrollment and Discipline